

The Honorable Thomas S. Zilly

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 JUN 07 2002 PM

CV 01-00235 #00000113

AT SEATTLE
 CLERK U.S. DISTRICT COURT
 WESTERN DISTRICT OF WASHINGTON
 BY _____ DEPUTY

IN THE UNITED STATES DISTRICT COURT
 FOR THE WESTERN DISTRICT OF WASHINGTON
 AT SEATTLE

BAINS LLC d/b/a Flying B,

Plaintiff,

v

ARCO PRODUCTS COMPANY, a division of
 Atlantic Richfield Co., a Delaware Corporation,

Defendant.

No C01-0235Z

JOINT INSTRUCTIONS

Pursuant to Local Civil Rule 51, the parties submit the following agreed upon Joint
 Instructions The parties incorporate the Court's Proposed Instructions by reference, and adopt
 the Court's Proposed Instruction numbers for additions and changes to the Court's Proposed
 Instructions

DATED this 7th day of June, 2002

Davis Wright Tremaine LLP
 Attorneys for ARCO Products Company

By *Michael Reiss*
 Michael Reiss, WSBA # 10707
 Holly M. Hearn, WSBA # 26795

FINAL JOINT INSTRUCTIONS - 1
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 Seattle

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21	Use of Interrogatories of a Party	9 th Cir. Model Jury Instr 2 13 (2001).	6	Both
22	Distinct Race	<i>Jatoi v Hurst- Euleless-Bedford Hospital Auth</i> , 8907 F 2d 1215 (5 th Cir. 1987)	7	Both

INSTRUCTION NO. 11

BREACH OF CONTRACT – ELEMENTS AND BURDEN OF PROOF

The plaintiff Flying B seeks to recover damages based upon a claim of breach of contract. An unjustified failure to perform a contract is a breach. Plaintiff has the burden of proving by a preponderance of the evidence the essential elements of this claim, which are:

- (1) The existence of a contract between the parties;
- (2) Plaintiffs performance,
- (3) Defendant's unjustified failure to perform; and
- (4) Damages to plaintiff caused by the breach.

1 Cal. Jury Instr. – Civ 10.85 (9th ed.) (introductory paragraph slightly modified for clarity).

INSTRUCTION NO. 20

JURY TO USE ONLY OFFICIAL ENGLISH TRANSLATION

The language of Punjabi has been used by some witnesses at various times during this trial.

The evidence you are to consider is only that provided through the official court interpreter. Although some of you may know Punjabi, it is important that all jurors consider the same evidence. Therefore, you must base your decision on the evidence presented in the English interpretation. You must disregard any different meaning

9th Cir. Civil Jury Instr. 3.4 (2001)

INSTRUCTION NO. 21

USE OF INTERROGATORIES OF A PARTY

Testimony is now to be presented to you in the form of answers of the defendant to written interrogatories by the plaintiff. These answers have been given in writing and under oath, before the actual trial, in response to questions which were submitted in writing under established court procedures. The answers are entitled to the same consideration and are to be judged as to credibility and weighed and otherwise considered by you in so far as possible, as if the answers were made from the witness stand.

9th Cir. Model Jury Instr 2.13 (2001)

INSTRUCTION NO. 22

DISTINCT RACE

For purposes of the federal law that prohibits discrimination in contracting the law recognizes East Indians as a distinct race.

Jatoi v. Hurst-Euleless-Bedford Hospital Auth, 807 F.2d 1215 (5th Cir. 1987).

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BAINS LLC d/b/a Flying B,

Plaintiff,

v.

ARCO PRODUCTS COMPANY, a division of
Atlantic Richfield Co., a Delaware Company,

Defendant

No C01-0235Z

CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the state of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein

On this date I caused to be served in the manner noted below a copy of the documents entitled: **JOINT INSTRUCTIONS**, on the following counsel of record:

Edwin S. Budge, Esq.
Budge & Heipt, P L L C.
705 Second Avenue, Suite 910
Seattle, WA 98104

CERTIFICATE OF SERVICE — 1
(C01-0235Z)

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Seattle

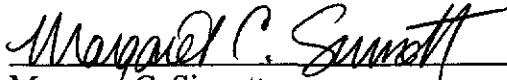
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2 BY:

3 ☐ U.S. MAIL
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7 Dated this PM day of June, 2002, at Seattle, Washington.

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10 Margaret C. Sinnott